

Unit Owner Rights in CLCs

Rev. 03/22/2022



*Presented By the Training Officer; Office of the
Ombudsman for Owners in Common-Interest Communities
and Condominium Hotels Training Program*





Disclaimer

- Staff in the Ombudsman's Office is prohibited from providing legal advice. All Materials produced and provided to the public are for informational purposes only and do not serve as legal advice.
- Should confusion arise requiring the interpretation and application of the law to your association's specific circumstances, a legal opinion from a qualified attorney may be necessary.
- Please review the course calendar, training request form, and presentations published on the training webpage to gain an understanding of additional opportunities for education and training. See our training webpage at http://red.nv.gov/Content/CIC/Program_Training/.

Agenda



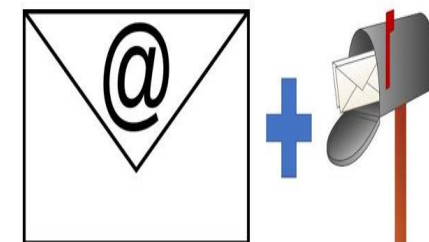
- Notifications
- Elections
- Meetings
- Complaints
- Finances
- Unique Rights
- Amendments
- Records
- Resale Package
- Termination of CIC

Notifications

NRS 116.31068

Effective 01 March 2022:

- Unless otherwise mandated in NRS 116, an association SHALL deliver notices to a mailing **OR** email address designated by a unit owner.
- If a unit owner has not designated an email address, **or has opted out of receiving emails**, the association may deliver notices by commercial delivery service, hand delivery or any other method reasonably calculated to provide required notice.
- The ineffectiveness of a good faith effort to deliver notice by above means does not invalidate action taken at or without a meeting.



Elections

NRS 116.31034 & NRS 116.212

- Unit owners shall elect an executive board of **at least three** members, all of whom **MUST** be unit owners.
- All unit owners from all CICs subject to a master association may elect all or specified members of that master association's executive board.
- Election ballots **MUST** be opened and counted at the **annual meeting of unit owners**.



Elections: Campaigning

NRS 116.31034(16)

- An association **shall not adopt any rule or regulation** that has the effect of prohibiting or unreasonably interfering with a candidate in the candidate's campaign for election, except
 - that the candidate's campaign may be limited to 90 days before the date that ballots are required to be returned to the association.
- A candidate may create, to have sent with the ballot, a single-page **candidate informational statement** to go out to each unit owner.
 - This statement cannot contain any defamatory information.



Elections: Campaigning continued

NRS 116.31035

- If an **official publication of the association** contains:
 - any mention of a candidate,
 - the official publication must, upon request, provide equal space to all candidates.
 - views or opinions concerning an issue of official interest,
 - the official publication must, upon request, provide equal space to opposing views.
- “Official publication” means:
 - An official website;
 - An official newsletter or other similar publication that is circulated to each unit’s owner; or
 - An official bulletin board that is available to each unit’s owner.



Elections: Removing a Board Member

NRS 116.31036

- Any member of the executive board may be removed, with or without cause.
- To call a removal election, unit owners **MUST** submit a written petition to the board or CAM, signed by the required percentage (**10% or less if the governing documents specify**).
- Secret written ballots for the removal election **MUST** be sent within **60 days** after the date on which the petition is received.
- Within **90 days** after the petition was received, the executive board **MUST** hold the meeting to open and count the secret written ballots.



Elections: Removing a Board Member continued

NRS 116.31036

- For removal to take place, at least **35%** of total voting members (take into account suspended voting rights) must vote **in favor** of removal, and votes cast in favor must also represent the majority of all votes cast.
 - The association **shall not adopt any rule or regulation** which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition.



Knowledge Check



1. Unless otherwise mandated in NRS 116, how shall an association deliver notices to unit owners?
2. When and where must election ballots be opened.
3. May an association adopt any rule or regulation prohibiting a candidate from campaigning for position on the board?
4. How many unit owners' signatures is required to call a removal election?
5. How many votes is required to remove a board member?

Meetings: Unit Owner's

NRS 116.3108

- A unit owner meeting **MUST** be held at least once each year at a time and place stated in the bylaws.
- **15 to 60** days in advance of the meeting, notice **MUST** be sent via mail OR email to the address designated by each owner.
- Notice **MUST** state the time and place of the meeting and include a copy of the agenda consisting of:
 - A clear and complete statement of the topics scheduled to be considered.
 - A list describing the items on which action may be taken.
 - A period devoted to comments by units' owners and discussion of those comments.



Meetings: Special Units Owners Meetings

NRS 116.3108(2)

- Unit owners constituting **at least 10%**, or any **lower** percentage specified in the bylaws, can request that the secretary call a special meeting to address a specific matter.
- This request must be
 - in the form of a written petition,
 - signed by the required percentage of unit owners,
 - mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association.
- The executive board **SHALL** set the date for the special meeting so that it is held not less than **15 days** or more than **60 days** after the date on which the petition is received.



Meetings: Budget

NRS 116.31151

- The board adopts a budget each year.
- Within **60 days** after adoption, the executive board shall provide a summary to each unit owner;
 - budget summaries **must be mailed OR emailed no less than 30 or more than 60 days** before the beginning of the association's fiscal year.
- Unit owners will have between **14 and 30 days** to review the proposed budget before ratifying it at a **unit owner's meeting**.
- Unless a majority of **all unit owners**, or any **larger vote** specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present.



Meetings: Executive Board

NRS 116.31083

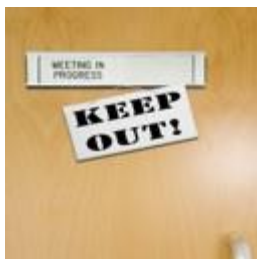
- A meeting of the executive board **MUST** be held
 - at least once every quarter,
 - not less than once every 100 days, and
 - At least twice a year, **MUST** be held at a time other than during standard business hours (9am-5pm).
- Except in an emergency, notice **MUST** be provided **not less than 10 days** before the date of a meeting of the executive board.
- Notice of the meeting **MUST** state the time and place and include
 - a copy of the agenda **or**
 - the date and locations where copies of the agenda may be conveniently obtained.



Meetings: Executive Session

NRS 116.31085

- Unit owners do **NOT** have the right to attend, speak at, or obtain specific minutes of board meetings held in executive session, unless
 - they are party to a hearing being conducted at that meeting.
- An executive board may **NOT** meet in executive session to open or consider bids for an association project or
 - to enter into, renew, modify, terminate or take any other action regarding a contract.



Meetings: Civil Actions

NRS 116.31088

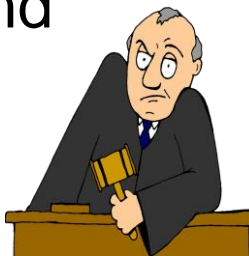
- At least 21 calendar days before a meeting at which the commencement of a civil action is to be considered, the association shall provide written notice to each unit owner of the meeting.
 - The association may commence a civil action **ONLY** upon a vote or written agreement of a majority of unit owners.
 - If a civil action is commenced without the required vote or agreement, the action **MUST** be ratified within **90 days by a majority of unit owners**.



Meetings: Civil Actions continued

NRS 116.31088

- At least **10 days** before the vote, the association shall provide a written statement (via mail **OR** email) to all unit owners that includes
 - a reasonable estimate of the costs, including attorney's fees, and
 - an explanation of the potential benefits or consequences if the action is not taken.
- Approval is **NOT** required for a civil action that is commenced:
 - To enforce the regular business of the association (assessment payments, enforcement of governing documents, or enforce a contract with a vendor);
 - To proceed with a counterclaim; or
 - To protect the health, safety and welfare of members of the association
- If and when applicable, the executive board **SHALL** disclose the terms and conditions of any settlement at the next regularly scheduled meeting.



Knowledge Check



1. How often must unit owners' meetings be held?
2. True/False: A budget is not ratified unless a majority of all unit owners vote in favor of the budget.
3. How often must the executive board meet?
4. What percentage of unit owners is required to call a special meeting?
5. Do unit owners have the right to attend, speak at or obtain detailed minutes of board meetings held in executive session?

Complaints

NRS 116.31087

- If a unit owner suspects the board has violated any provision of NRS 116 or the governing documents, they have the right to have the issue addressed.
- Upon receiving written request from the unit owner, the executive board SHALL place the subject of the complaint on the agenda of the next regularly scheduled board meeting.
- No later than 10 business days after receiving such a complaint, the board SHALL acknowledge receipt.



Complaints continued

NRS 116.760

- A person who is aggrieved by an alleged violation and who wishes to file a complaint, must file the complaint within **one year** of discovering or one year of when they reasonably should have discovered the violation.
- A written affidavit filed with the Division **MUST** be on form 530 (intervention affidavit) and
 - accompanied by evidence that the aggrieved person has provided the respondent, by certified mail, return receipt requested, written notice of the alleged violation and a reasonable opportunity to cure.



Complaints: Retaliation

NRS 116.31183

- An executive board, a member of a board, a CAM or an officer, employee or agent of an association shall NOT take, direct or encourage another to take, any retaliatory action against a unit owner because that owner has:
 - Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;
 - Recommended the selection or replacement of an attorney, community manager or vendor; or
 - Requested in good faith to review the books, records or other papers of the association.
- In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:
 - Compensatory damages; and
 - Attorney's fees and costs of bringing the separate action.



Finances: Assessments

NRS 116.3115

- All common expenses for the daily operations and the reserves **MUST** be assessed against ALL units in accordance with their allocations.
- Any common expense benefiting fewer than all unit owners may be assessed exclusively against the units or unit owners benefiting from that common element.
- If damage to a unit or other part of the community is caused by the willful misconduct or gross negligence of any unit owner, tenant or invitee, the association may assess that expense exclusively against his or her unit.



Finances: Surplus Funds

NRS 116.3114

- **Unless otherwise provided in the declaration**, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves **MUST**
 - be paid to unit owners in proportion to their liabilities or
 - credited to them to reduce future assessments.



Finances: Capital Improvements

AO 16-01 & NRS 116.345

- To initiate a capital improvement (any new common element or common element component), the authority must be granted to the board in the governing documents.
- If the authority is granted, the association may **NOT** construct the new element unless it was previously **disclosed** to unit owners in a meeting, where any additional money needed from unit owners to create the new element must be discussed.
 - * Proper budget process must be followed, board cannot simply divert funds at will.
- The association **MUST** obtain the **written consent** of a majority of unit owners and residents who own property or reside **within 500 feet** of the proposed location of the new structure.



Finances: Imposing Fines/Sanction

NRS 116.31031(1)

- To impose sanctions:
 - The governing documents **MUST** provide the association the authority to:
 - impose a fine,
 - prohibit a unit owner from using the common elements, and/or
 - restrict voting rights within the CIC.
 - The association **MUST** comply with all provisions of NRS 116.31031 and the pending updates to NAC 116.



Finances: Violation Notice

NRS 116.31031(4)

- The board MAY NOT impose a fine unless, at least 30 days before the alleged violation, the violator was provided with written notice of the applicable provisions of the governing documents that form the basis of the alleged violation.
- The association MUST send notice of an alleged violation to the address of the unit **and**, if different, to a mailing address specified by the unit's owner before a fine may be imposed.
- The board MUST hold a hearing (executive session) before a fine may be imposed.
 - The board MUST schedule a date, time and location for a hearing on the alleged violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for and be present at the hearing.
 - Must be at least 10 days before the meeting per NRS 116.31083.



Knowledge Check



1. If a unit owner suspects a board of violating NRS or the governing documents, what is the first step they must take?
2. How long after discovering an alleged violation does an aggrieved person have to file a complaint with the Division?
3. Where does a board gain the authority to initiate a capital improvement project?
4. Where does a board gain the authority to impose a fine or sanction?
5. True/False: A board may impose a fine on a unit owner, without holding a hearing if the alleged offense affects the health and welfare of the association.

Unique Rights: Renting

NRS 116.335

- A unit owner may rent or lease their unit without interference from the association, unless at the time of purchase the declaration
 - Prohibited renting or leasing, or
 - Required the owner to obtain approval to rent or lease.
- If a declaration contains provisions establishing a maximum number or percentage of units which may be rented or leased, that provision may **NOT** be amended to decrease that maximum.
- If the governing documents of an association require a unit owner or tenant to register with the association or submit information concerning the lease or rental agreement, the association **may NOT charge a fee.**



Unique Rights: Renting for Transient Commercial Use

NRS 116.340

- “Transient Commercial Use” means the use for remuneration when term of occupancy is less than 30 consecutive calendar days.
- A unit owner may use their unit for a transient commercial use only if:
 - The governing documents (includes master association) do not prohibit such use;
 - The board and master approve the transient commercial use,
 - Except when the master association’s governing documents don’t require approval, and
 - The unit is properly zoned and licensed according to local ordinances or laws.
- The association(s) may establish requirements for the transient commercial use of a unit including:
 - Payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use.



Unique Rights: Displaying a Flag

NRS 116.320

- Neither the board, nor the governing documents, may prohibit a unit owner from displaying the flag of the United States or of the State of Nevada.
- Authorized flag **MUST** be:
 - Made of cloth, fabric or paper;
 - Displayed from a pole or staff or in a window;
 - For US flag, displayed in a manner that is consistent with 4 U.S.C. Chapter 1, and
 - The state flag may not be larger than the US flag displayed, if both are display together.
- This right **does not apply** to flags made of balloons, flora, lights, paint, paving, roofing, siding or any other similar building, decorative or landscaping component.



Unique Rights: Displaying Political Signs

NRS 116.325

- Defined as a sign which expresses support for or opposition to a candidate, political party or ballot question in any federal, state, local or association election.
- Neither the board, nor the governing documents, may prohibit a unit owner or occupant from exhibiting one or more political signs, subject to the following conditions:
 - All political signs may not be larger than 24x36 inches.
 - If the unit is occupied by a tenant, the unit owner may not exhibit any political sign unless the tenant consents, in writing.
 - All political signs are subject to any applicable provisions of law.
 - A unit owner or occupant may exhibit as many signs as desired but not more than one sign per candidate, party or ballot question.



Unique Rights: Drought Tolerant Landscaping

NRS 116.330

- Defined as landscaping which conserves water, protects the environment and is adaptable to local conditions.
- Neither the board, nor the governing documents, may prohibit a unit owner from installing or maintaining drought tolerant landscaping in either their front or back yard, except that:
 - Before installation, unit owners **MUST** submit an ARC request in accordance with any procedures set fourth in the governing documents; and
 - To the maximum extent possible, the landscaping **MUST** be compatible with the style of the CIC.



Unique Rights: Storage of Solid Waste Containers

NRS 116.332

- An association MAY NOT regulate or restrict the manner in which containers for the collection of solid waste or recyclable materials are stored on the premises of a residential unit with curbside service.
- An association MAY adopt rules that reasonably restrict the manner in which such containers are stored on the premises when not within the collection area. These rules MUST:
 - Comply with all applicable codes and regulations; and
 - Allow the unit's owner, or a tenant, to store containers outside any building or garage.
- An association MAY designate a collection area and regulate how, when, where, and for how long containers may be placed in that area.



Unique Rights: Solar energy

NRS 278.0208

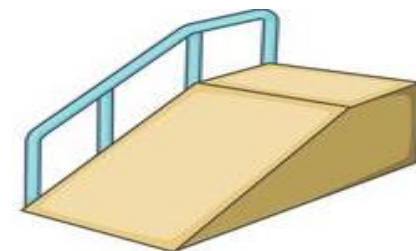
- Neither the board, nor the governing documents, may unreasonably restrict a unit owner from installing solar energy on their property.
- Unreasonable restrictions include:
 - A restriction on the use of a system for obtaining solar energy which decreases the efficiency or performance of the system by more than 10% of the amount that was originally specified for the system, as determined by the Director of the Office of Energy, and
 - Which does not allow an alternative system of comparable cost and comparable efficiency and performance.
 - The prohibition of solar energy system that uses components painted with black solar glazing.



Unique Rights: Altering a Unit

NRS 116.2111

- A unit owner MAY NOT change the exterior appearance of a unit without permission of the association.
- An association MAY NOT:
 - Unreasonably restrict reasonable access to a unit.
 - Charge any fee for a person to enter the CIC.
 - Unreasonable restrict a unit owner from adding:
 - Ramps, railings or elevators for any disabled occupants;
 - Additional locks for unit security; or
 - Shutters for improved security or reduced energy costs.



Unique Rights: Altering a Unit continued

NRS 116.2111

- Any improvement or alteration made that is visible from any other portion of the CIC MUST
 - be added in accordance with the procedures set forth in the governing documents of the association and
 - to the maximum extent practicable, be compatible with the style of the CIC.



Unique Rights: Parking

NRS 116.350(3)&(4)

- The executive board **shall not**, and the governing documents **must not** prohibit a person from:
 - Parking a utility service vehicle with a gross vehicle weight rating of 20,000lbs or less, or a law enforcement or emergency service vehicle:
 - In an area designated for visitor parking, a designated parking area, a common parking area, or on the driveway of a unit
 - if the person is an owner or tenant, and
 - is bringing the vehicle to their unit pursuant to their employment.
 - Association may require the owner to provide proof from their employer.



Amendments: Declaration

NRS 116.2117

- The declaration may only be amended by a majority vote or agreement of unit owners.
 - The declaration may specify a required percentage other than a simple majority.
- Unit owners may NOT challenge the validity of an amendment after 1 year of recording the amendment.

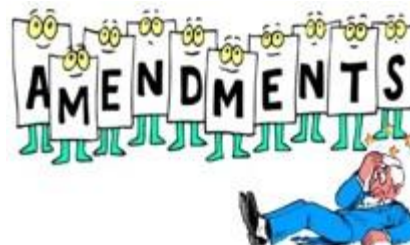


Amendments: Bylaws

NRS 116.3106

- The bylaws may be amended by the board and/or a majority vote or agreement of unit owners.
 - The bylaws may specify a required percentage other than a simple majority.
- ONLY unit owners may amend the board’s qualifications, powers, duties, and terms of office.

NRS 116.3103(2)(d)



Amendments: Notification

NRS 116.12065

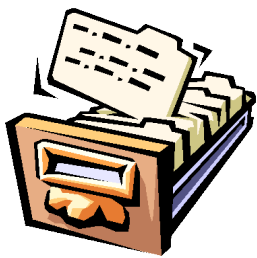
- If any change is made to the governing documents, the secretary or other officer specified in the bylaws SHALL provide a copy of the change(s) to all unit owners within 30 days.



Records

NRS 116.3118

- The association SHALL keep financial records sufficiently detailed to comply with the requirements of a resale package.
- The executive board SHALL provide a copy of the following **within 21 days of receiving a written request** from a unit's owner or the Ombudsman:
 - The financial statement of the association;
 - The budgets of the association; and
 - The study of the reserves of the association.
- All financial and other records of the association MUST be
 - maintained and
 - made available for inspection, examination, review, photocopy, and audit by any unit's owner and his/her authorized agent(s).



Records: Website

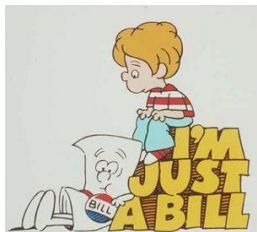
SB-186

Effective January 1, 2022

- Each association with 150 or more units will be required to maintain a website or electronic portal for unit owners to access:
 - The governing documents;
 - The most recent Declaration;
 - The annual budget and any proposed budgets;
 - The notices and agendas for upcoming meetings; and
 - Any other documents that may be required by law.

Effective January 1, 2023

- The required website or portal must also allow unit owners the ability to pay assessments electronically.



Resale Package

NRS 116.4109

- Each purchaser of a CIC unit SHALL receive a resale package (or public offering statement if 1st purchaser) containing:
 - A copy of all governing documents,
 - The monthly assessment,
 - A copy of the current operating budget and current financial statement,
 - A statement of any unsatisfied judgments or pending legal actions against the association and any past due amounts owed by the seller,
 - A statement of any fees associated with the resale of a unit,
 - The association's fines & fees schedule and collection policy, and
 - A summary of the study of the reserves.



Termination of CIC

NRS 116.2118

- A common-interest community may ONLY be terminated by agreement of 80% of unit owners, or
- any larger percentage the declaration specifies (could be unanimous).



Knowledge Check



1. May an association amend its declaration to prevent a current owner from renting or leasing their unit?
2. True/False: Neither the board, nor the governing documents, may prohibit a unit owner from displaying any flag, in any manner.
3. Can an association mandate a unit owner store trash cans in a garage?
4. Can solar energy systems be prohibited on the basis of color?
5. Who may amend the declaration?

Right to Participate



THE LARGE TURNOUT AT THE OPEN MEETING
HAD THE BOARD A LITTLE NERVOUS

Conclusion!



- Notifications
- Elections
- Meetings
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Questions?

- <http://red.nv.gov/> - Main Page
- CICOmbudsman@red.nv.gov – Email Questions
- http://red.nv.gov/Content/CIC/Program_Training/